

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:22-CR-0037-M

UNITED STATES OF AMERICA

v.

ERIC DESHAWN ROACH

MOTION TO COMPEL

Defendant Roach, through his counsel, files this motion to compel the production of the complete extracts of the Alcatel device and the Apple device, pursuant to Federal Rule of Criminal Procedure 16. In support of this motion, Mr. Roach states the following:

1. Mr. Roach made his first appearance on September 6, 2022, to a multi-count indictment involving violations of conspiracy to distribute and possession with the intent to distribute a quantity of fentanyl and quantity of heroin, distributing a quantity of fentanyl, and possession of ammunition by a convicted by a felon.
2. Discovery in the instant matter was made available-October 4, 2022.
3. After multiple oral requests for the complete download of the phones involved in the case had been made, a text message was sent on January 24, 2023 from undersigned defense counsel to AUSA Knott, requesting the complete Cellebrite

download. AUSA Knott immediately replied, that he would have the entire report the following week.

4. On February 2, 2023, undersigned counsel again contacted AUSA Knott and requested the status of the Cellebrite report. AUSA Knott responded he had the report and was in the process of forwarding it to the defense.

5. Undersigned counsel retained the expert services of Spencer McInville (herein “Spencer”) to review the three Cellebrite reports on an iPhone, Alcatel phone and LG phone. Spencer determined the Cellebrite reports for all three phones were incomplete. On February 23, 2023, undersigned counsel via email sent a request pursuant to FRCP 16 (a)(1)(E) for the Government to permit Spencer access to the three phones so he may download the phones. AUSA Knott immediately responded he would “send it up the pole.”

6. On March 1, 2023, undersigned counsel, again, requested access to the data on the three cellular phones. Eventually, the government agreed to allow Spencer access to the phones but the phone had to remain in the custody of the Government’s expert in cellular phone extractions, Scott Hettinger in Carolina Beach, NC (herein “Scott”).

7. After multiple emails between undersigned counsel, AUSA Knott, Spencer, and Scott; a meeting was scheduled for March 20, 2023 to allow Spencer access to the three phones. Unfortunately, the phones were not delivered to Scott for the March 20th inspection and another date had to be scheduled.

8. After a flurry of additional emails the next meeting was scheduled for April 10, 2023 in Carolina Beach at Scott's office.

9. At the April 10, 2023 meeting, Spencer was able to get a full extraction of the LG device but the iPhone and the Alcatel devices required additional work.

Specifically, the iPhone needed a "donor" device to swap the board in order to finish the unlock and complete the download. The Alcatel device required a "Force

Download" mode, a time intensive download. As Spencer was not permitted to take custody of the phones to perform these lengthy and time consuming tasks, Scott informed Spencer he would do the necessary work and complete the downloads.

Particularly, Scott was going to provide the .bin file obtained from the physical extraction on the Alcatel phone. On the Apple device, Scott was going to produce the Graykey .pdf extraction report summary, full file system extraction folder (compressed folder), Keychain property list (plist) file, and passwords text file for the unlock and extraction.

10. To expedite the matter, Spencer provided the donor device for the iPhone extraction. On May 3, 2023, the defense received a report that the donor device was a success, and the iPhone "Brute Force" was in progress.

11. On May 12, 2023, the defense was informed by Scott that the iPhone was unlocked and the data was to be extracted. As no further communication has been received from Scott, undersigned counsel sent an email to AUSA Knott and Scott inquiring as to the status of the reports on the iPhone and Alcatel phone on May 20, 2023. No response has been received to date.

12. On June 5, 2023, Spencer emailed Scott as to the status of the iPhone and Alcatel phone reports. No response has been received to date.

13. The defense believes the information on the iPhone and Alcatel phones is exculpatory and necessary to defend Mr. Roach from the allegations contained in the indictment.

WHEREFORE, Mr. Roach respectfully requests that the Court order the Government to provide the .bin file obtained from the physical extraction on the Alcatel phone and produce the Graykey .pdf extraction report summary, full file system extraction folder (compressed folder), Keychain property list (plist) file, and passwords text file for the unlock and extraction from the iPhone.

Respectfully submitted this 6th day of June, 2023.

G. ALAN DuBOIS
Federal Public Defender

/s/ Leza Lee Driscoll
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LR 57.1 Counsel Appointed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by CM/ECF upon:

Brad Knott
United States Attorney's Office – EDNC
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601

This the 6th day of June, 2023.

G. ALAN DuBOIS
Federal Public Defender

/s/ Leza Lee Driscoll
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